HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.20642 of 1999

Dated 23rd day of October, 2007

Between:

N. Ganga Praveen Naik .. Petitioner

And

The Executive Officer,
Office of the Cantonment Board,
Secunderabad ..
Respondent

O R D E R:

This writ petition is filed seeking a mandamus to declare the Notice dated 13.8.1999 issued by the respondent-Executive Officer indicating that the erection/re-erection of the building by the petitioner should be stopped and the erection/re-erection completed by him should be demolished and be re-erected in the manner specified in coloumn (4) of the Schedule, as arbitrary and illegal.

The petitioner asserts that he purchased an open plot admeasuring 140 square yards or 117.04 square meters in S.No.115 from Sri Hanumanji Cooperative Housing Society Limited. After making an application dated 11.2.1998 to the respondent for registration of the plot, the petitioner made constructions in it and since then he has been in peaceful possession and enjoyment of it. Now, his grievance is that the respondent issued the Notice dated 13.8.1999 directing him to remove the constructions which is contrary to Section 181(6) of the Cantonment Act, 1924 (Act 2 of 1924).

The respondent has filed counter affidavit stating that without the open plot being registered the petitioner's plan for construction of the building therein cannot be approved, as such, the petitioner cannot make any constructions in the alleged open plot without any approved plan or permission. After submission of the application by the petitioner, the respondent-Executive Officer of the Cantonment Board verified it and found that the open plot alleged to have been purchased by the petitioner was shown as owner's land in the approved layout of Hanumanji Cooperative Housing Society Limited, Bowenpally. Hence, the Cantonment Board returned the application dated 11.2.1998. Admittedly, Hanumanji Cooperative Housing Society Limited has no title over the land purchased by the petitioner as the same was shown as owner's land in the approved lay out.

Heard the learned counsel for both the parties and perused the material placed on record.

No doubt, in the instant case, it is established that there is erection/re-erection of the building under Section 184 of the Cantonments Act, 1924 and a notice as contemplated under Sub-section(1) of Section 185 of the Act was also issued calling upon the petitioner to remove the erection within a specific period, otherwise, the same would be demolished. The Cantonments Act, 1924 was repealed and Cantonments Act, 2006 (Act 41 of 2006) came into existence in its place and Section 248 of Act 41 of 2006 is incorporated which deals with the power to stop erection or re-erection or to demolish. In the said provision, it is also stated that if the Board may instead of requiring the alteration, demolition of any such building or part thereof accept by way of composition such sum as it thinks reasonable.

In the light of the power conferred upon the Board by the statute, this Court is of the view that the petitioner may approach the Cantonment Board and offer his explanation and also offer to pay the compensation so that the Cantonment Board may fix the amount of compensation. The petitioner may make his representation, within a period of four weeks from the date of receipt of a copy of this order, requesting the respondent-Executive Officer to consider it. On receipt of such representation, the respondent may consider it and pass appropriate orders within a period of four weeks thereafter. Till such a representation is made and the respondent takes a decision, no coercive steps shall be taken against the petitioner.

With the above observation, this writ petition is disposed of. No costs.

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23.10.2007

bcj